

DRAFT

**SAFETY AND HEALTH CODES BOARD
MEETING MINUTES
THURSDAY, OCTOBER 13, 2011**

BOARD MEMBERS PRESENT: Mr. Chuck Stiff, Outgoing Chair
Ms. Milly Rodriguez, newly-elected Chair
Mr. Jerome Brooks, DEQ representative
Mr. Gregory Hart
Ms. Anna Jolly, Outgoing Secretary
Mr. Satish Korpe
Ms. Rebecca LePrell, VDH representative
Mr. Marc Olmsted
Mr. Mike Pischke
Mr. Danny Sutton
Mr. Tommy Thurston

BOARD MEMBERS ABSENT: Mr. Charles Bird
Dr. James Mundy
Ms. Eloisa Rea

STAFF PRESENT: Courtney M. Malveaux, Esq., Commissioner, Dept. of
Labor and Industry
Mr. Bill Burge, Assistant Commissioner -- VOSH
Mr. Jim Garrett, Director of VOSH Programs
Mr. Ron Graham, Director, Occupational Health
Compliance
Mr. Jay Withrow, Director, Division of Legal Support
Mr. Ed Hilton, Director, Boiler Safety Compliance
Mr. John Crisanti, Manager, Office of Planning and
Evaluation
Ms. Jennifer Wester, Director, Cooperative Programs
Division
Ms. Reba O'Connor, Regulatory Coordinator
Ms. Regina Cobb, Agency Management Analyst Senior
Ms. Deonna Hargrove, Compliance Officer, Richmond
Region
Ms. Kim Hewitt, Compliance Officer, Richmond Region
Ms. Theresa Brookman, Compliance Officer, Richmond
Region
Mr. Dan Wilson, Compliance Officer, Richmond Region
Mr. Art Scott, Boiler Inspector, Verona
Ms. Tamar Jones, Intern

OTHERS PRESENT:

Ms. Terry Griffith, Certified Court Reporter, Chandler & Halasz, Inc.

Ms. Beverly Crandell, Federal OSHA

Joshua N. Lief, Esq., Office of the Attorney General

Mr. J. McRoy, MEB General Contractors

ORDERING OF AGENDA

Chairman Chuck Stiff called the meeting to order at 10:05 a.m., and noted that there was a quorum. Mr. Stiff asked for a motion to approve the Agenda. Mr. Thurston moved to accept the Agenda and Mr. Sutton properly seconded the motion. Mr. Korpe then moved that Agenda item 7B, Review of Board Bylaws, be moved ahead of item 5, Election of Officers so that the Bylaws would be heard before the elections are held. This motion was properly seconded by Mr. Sutton. The Agenda was approved, as amended, and the motion was carried by unanimous voice vote.

APPROVAL OF MINUTES

Mr. Stiff asked the Board for a motion to approve the Minutes for the January 20, 2011, Board meeting. On proper motion by Ms. Rodriguez and seconded by Mr. Thurston, the Minutes were approved, as submitted, by unanimous voice vote.

UPDATE AND INTRODUCTION OF NEW BOARD MEMBERS

Mr. John Crisanti, Manager of the Office of Planning and Evaluation for the Department, introduced three new members: Mr. Marc Olmsted, Labor Representative of the Boiler and Pressure Vessel Industry; Mr. Greg Hart, representative of an insurance company; and Mr. Michael Pischke, Employer Representative of the Boiler and Pressure Vessel Industry. Mr. Crisanti informed the new members that he and Regina Cobb will be glad to assist them. Mr. Crisanti welcomed the new Board members.

REVIEW OF BOARD BYLAWS

As per the Chairman's request at the last meeting, Mr. Crisanti provided a section-by-section overview of the Board Bylaws which the Board adopted on 14 December 2004.

ELECTION OF OFFICERS

Chairman Stiff requested nominations for the position of Board Chair. Mr. Sutton nominated Ms. Rodriguez for Board Chair. There were no other nominations. Ms. Jolly seconded the motion and Ms. Rodriguez was unanimously elected as Chair. Mr. Stiff passed the duties of the Chair to Ms. Rodriguez who requested nominations for Vice Chair. Mr. Satish Korpe nominated himself and Ms. LePrell seconded the nomination. Mr. Stiff nominated Mr. Thurston and Ms. Jolly seconded the motion. There were no other nominations. Mr. Korpe and Mr. Thurston briefly informed the Board about their background. After a majority voice vote, Mr. Thurston was elected Vice Chair.

Ms. Rodriguez informed the Board that she would select a Secretary at the next meeting.

PUBLIC COMMENTS

Ms. Rodriguez opened the floor to comments from the public, however, there were no comments.

OLD BUSINESS

Report on Periodic Review of Certain Existing Regulations

Ms. Reba O'Connor, Regulatory Coordinator for the Department of Labor and Industry, stated that Governor McDonnell's Executive Order 14 (2010), "Development and Review of Regulations Proposed by State Agencies," governs the periodic review or re-evaluation of existing regulations and the regulatory process to promulgate new regulations or amend current regulations.

After explaining the review process, she informed the Board that, at its January 20, 2011 meeting, two regulations of the Board were approved for periodic review: 1) 16 VAC 25-55, Financial Responsibility of Boiler and Pressure Vessel Contract Fee Inspectors; and 2) 16 VAC 25-75, Telecommunications, General, Approaches Distances.

She explained that the review of both regulations had been completed and that the public comment period for these regulations began on March 14, 2011, and ended on April 5, 2011, with one comment posted by Mr. Keith Johnson on April 4, 2011, expressing support for the Boiler Regulation. She added that there were no comments on the Telecommunications regulation.

On behalf of the Department, Ms. O'Connor recommended that, as a result of the review, these regulations be retained in their current form with no changes.

Mr. Korpe asked for an explanation of the Financial Responsibility of Boiler and Pressure Vessel Contract Fee Inspectors Regulation. Mr. Ed Hilton, Chief Boiler Inspector for the Department gave a detailed response to Mr. Korpe's question.

Mr. Stiff moved to accept Ms. O'Connor's recommendation to retain the two reviewed regulations in their current form, and Ms. Jolly seconded the motion which was unanimously approved by voice vote.

NEW BUSINESS

General Working Conditions in Shipyard Employment; Revised Final Rule; and Corrections

Mr. John Crisanti, Manager of the Office of Planning and Evaluation, requested, on behalf of the VOSH Program, that the Board consider for adoption federal OSHA's Revised Final Rule for General Working Conditions in Shipyard Employment, as published in 76 FR 24575 on May 2,

2011, and subsequent corrections to §§1910.145 and 1910.147, as published in 76 FR 44265 on July 25, 2011.

Mr. Crisanti summarized the final rule by explaining that federal OSHA revised and updated standards to the existing Subpart F of 29 CFR part 1915 that addresses hazards in general working conditions in shipyard employment which include activities performed aboard vessels, in confined or enclosed spaces below deck, on scaffold and on busy crowded docks. He stated that these revisions update existing requirements to reflect advances in industry practices and technology, consolidate certain safety and health requirements into a single subpart, and provide protection from hazards not previously addressed, including the control of hazardous energy.

He explained that, if adopted by the Board, the final rule would cover diverse working conditions in shipyard employment, including sanitation, medical services and first aid, motor vehicle and pedestrian safety, lighting, housekeeping, and hazardous energy. He stated that the final rule would apply to all shipyard employment at landside facilities, on vessels and in vessel sections. The revised final rule would not apply to landside fish-processing facilities, which continue to be covered by Part 1910, General Industry, requirements.

Mr. Crisanti provided background on the final rule by stating that in 1972, federal OSHA adopted many of the provisions for the initial Subpart F from existing federal OSHA standards and national consensus standards which have since been updated and revised. He stated that OSHA incorporated those changes in this revised final rule.

Mr. Crisanti addressed the hazards involved in shipyard employment. He stated that employees are exposed to many different hazards due to the nature of their work which includes a variety of industrial operations, such as steel fabrication, welding, abrasive blasting, electrical work, pipefitting, rigging, stripping and coating applications. He explained that shipyard employment workers also operate and service complex machinery and equipment (i.e., powered industrial trucks, cranes and vessel systems). He noted that the hazards associated with these operations and equipment increased because they are often performed outdoors in all types of weather.

Mr. Crisanti informed the Board that all private sector maritime activity in Virginia is directly enforced by federal OSHA and is solely under OSHA's jurisdiction; however, public sector maritime activity is under VOSH's jurisdiction, in accordance with the state plan agreement with federal OSHA (29 CFR 1952.375 (b)(1)). He added that there should be minimal, if any, impact on public sector employers resulting from adoption of these revised standards because there is only very limited public sector maritime-related activity in Virginia. He mentioned that there are two ferries, owned and operated by the Virginia Department of Transportation (VDOT) that could possibly fall under this standard; however, since the final rule does not affect United States Coast Guard-inspected vessels, which include ferries, there may be no impact from this final rule on public sector employers in Virginia.

Mr. Crisanti explained that compliance with these new provisions is expected to decrease the number of employee injuries and fatalities. He added that any impact on Virginia employees would likely be limited to VDOT employees who work on the publicly-owned and operated ferries (mentioned above).

Mr. Crisanti stated that any impact on the Department resulting from adopting these revised standards would be negligible, and that any costs would be related to training VOSH compliance staff on the standard.

Mr. Crisanti then informed the Board that federal OSHA found the revised standard to be technologically feasible in that the revised standards do not require technology that is not already in use in many affected establishments, and that many of the requirements involve implementing work-practice controls that can be communicated to employees through training. Additionally, he stated that federal OSHA believes that compliance with the final rule will yield substantial benefits in terms of lives saved, injuries avoided and their related costs.

In conclusion, Mr. Crisanti recommended that the Board adopt federal OSHA's Final Rule for General Working Conditions in Shipyard Employment, and subsequent corrections to §§1910.145 and 1910.147, as authorized by Virginia Code §40.1-22(5) and 2.2-4006.A.4(c), with an effective date of January 15, 2012, except for §1915.89, which will become effective on April 15, 2012.

Ms. Jolly moved to accept Mr. Crisanti's recommendation. Mr. Korpe properly seconded the motion which was unanimously approved by voice vote.

Standards Improvement Project – Phase III; Final Rule

Mr. Crisanti requested that the Board consider for adoption federal OSHA's final rule for the Standards Improvement Project-Phase III, as published in 76 FR 33590 on June 8, 2011.

He summarized the final rule by stating that federal OSHA proposed a number of actions to amend its standards, including revisions to the Agency's general industry, maritime, construction, and agricultural standards. He added that the ongoing Standards Improvement Project-III (SIP-III) removes or revises individual requirements within rules that are confusing, outdated, duplicative, or inconsistent. He continued by stating that OSHA had identified several requirements for this phase, including rigging, NIOSH records, and training certifications for improvement based on OSHA's review of its standards, suggestions and comments from the public, or recommendations from the Office of Management and Budget (OMB). He detailed the various changes resulting from this final rule.

He explained that SIP-III is the third in a series of rulemaking actions to improve and streamline federal OSHA standards, and that the Board had these changes on October 19, 1998 (eff. January 1, 1999) and on January 5, 2005 (eff. August 15, 2005).

Mr. Crisanti explained that this revised standard will help employers to better understand their regulatory obligations which will increase compliance and reduce compliance costs without imposing any additional new cost burdens on employers. He stated that OSHA believes that removing from the revised standard requirements for employers to transfer records to NIOSH, and to develop and maintain certification records would eliminate an estimated 1.9 million hours per year of redundant reporting burdens for employers, nationally. He added that the revised

standard would eliminate an estimated 51, 350 hours per year of reporting burdens for Virginia employers.

He stated that OSHA is not deleting any requirements that employers train workers in the appropriate use of PPE, and that the standard will maintain the same level of protection for employees.

He added that there is no significant impact anticipated for the Department as a result of adopting this revised standard, and that minimal costs may exist for training compliance staff on the requirements of the amended standards.

Mr. Crisanti informed the Board that the final rule is technologically feasible for employers because it reduces requirements or provides flexibility to employers.

With respect to benefits/costs of the final regulation, Mr. Crisanti informed the Board that OSHA estimated that nationally this final rule will result in annual cost savings to employers exceeding \$45 million and will reduce the paperwork burden by 1.85 million hours. He estimated cost savings to Virginia employers to be approximately \$1.2 million, and the paperwork burden reduced by approximately 50,000 hours annually. He stated that this final rule will not impose additional costs on any private-or-public-sector entity, and that no additional expenditures by either public or private employers are required.

Mr. Crisanti called the Board's attention to several crossed out subsections in this final rule. He explained that the Department is not asking the Board to adopt the crossed out subsections as these federal sections are not currently enforced by VOSH because of state code precedence or they are superseded by Virginia's unique regulations, such as, construction sanitation, §1926.51, or field sanitation, §1928.110. He directed the Board to page 7 of the briefing package which listed all of the sections to be adopted.

Mr. Korpe asked whether there would be enough time for the final rule would go through the standard adoption process with public comments, etc. by the January 15, 2012 effective date. Mr. Crisanti explained that this final rule is federal identical and receives an Article II exemption under the APA, and Virginia relies on federal OSHA's time period for public comment.

In conclusion, Mr. Crisanti recommended that the Board adopt federal OSHA's Final Rule for Standards Improvement Project - Phase III, as authorized by Virginia Code §40.1-22(5) and 2.2-4006.A.4(c), with an effective date of January 15, 2012.

Mr. Korpe moved to accept Mr. Crisanti's recommendation. Mr. Stiff properly seconded the motion which was unanimously approved by voice vote.

Ms. Regina Cobb, Agency Management Analyst Sr., and staff support to the Board, informed the Board about the approval of HB 2277 (3/24/11), which amended §2.2-2813, relating to compensation paid to citizen members of state boards, commissions, and other collegial bodies. She explained that, as of July 1, 2011, non-legislative Board members who are appointed at the state level and who receive 3 or more travel reimbursements annually shall be required to

participate in the Electronic Data Interchange (EDI) Program or Direct Deposit as a condition of accepting such appointment. She explained that the purpose of this amendment is to aid the Commonwealth in reducing the number of paper checks issued and to streamline the payment process. She informed the Board that a form had been included in their packet of information and that completed forms could be given or sent to her and she would forward the forms to the Department's Accounting Department for processing.

Mr. Crisanti added that the Department encourages the Board to enroll in the EDI program.

Items of Interest from the Department of Labor and Industry

Mr. Crisanti paid tribute to former Commissioner Carol Amato, who died on June 1, 2011. She served as Commissioner of the Department of Labor and Industry from 1985 to 1994. He informed the Board that, following her tenure with the Department, Ms. Amato served as Chief Operating Officer for the Virginia Museum of Fine Arts, where she served for 16 years before retiring in 2010. He added that she guided the museum during its largest expansion in 75 years. Mr. Korpé requested a moment of silence in Ms. Amato's honor.

Commissioner Malveaux thanked the Board members for their time and effort in serving on the Board and his staff for their due diligence throughout the Department. Additionally, he congratulated the newly-appointed Board members and new officers.

He informed the Board that the Department is faced with many challenges. He stated that state revenues have been sluggish and that he has been asked to make plans for additional budgetary cuts of two, four and six percent. He assured the Board that the Department will not sacrifice its mission of safety and health.

He stated that there have been 24 fatalities this year, same as all of last year.

Commissioner Malveaux informed the Board that over 340 people attended the 16th Annual VOSH Conference, held in Portsmouth, VA from October 4 through October 7, 2011. He commended Jennifer Wester on doing a great job on the Conference. He stated that the Department is now using data from the Workers' Compensation Commission and the Virginia Employment Commission to identify employers and to find out where workers are getting hurt. He stated that the Department has received a grant from the Productivity Investment Fund from the Governor's Office to find a way to utilize these databases for the benefit of each of the agencies.

He stated that the Department has a legislative package. He stated that there are ongoing discussions about the federal budget and the possibility of cutting out the Voluntary Protection Program (VPP). He mentioned that the Department is trying to structure the VPP so that even if it is defunded from Washington, it will still be in Virginia. He stated that the Department wants VPP funding in the Virginia Code. He said that the Department may get more penalty money from our initiative in working with the Workers' Compensation Commission.

Mr. Korpe moved to request a moment of silence in tribute to former Commissioner Amato, and Ms. Jolly and Mr. Stiff seconded the motion, which was unanimously approved by voice vote.

In response to Mr. Korpe inquiry about an official Board notification of catastrophic injuries in the Commonwealth, Mr. Withrow, Director of Legal Support for the Department, responded that there are statutes and regulations about releasing information about open cases. He stated that the Department is only allowed to release citations when they are issued. He continued by stating that the Department could scan citations and email them to Board members, for those members who would like to receive the citations. He also referred the Board to www.OSHA.gov where they can click on a link for fatal accidents. He said that, although the information is usually a couple of weeks behind, one can see the number of fatalities and a brief description of the fatalities.

Mr. Withrow reminded the Board that the unique tree trimming regulation became effective this year. He informed them that he sent out approximately a thousand mailings to all tree trimmers in Virginia and to approximately 330 loggers. He stated that the Department has been receiving requests from tree trimmers for consultation business, which is a good thing.

Mr. Withrow stated that there were 6 logging fatalities this year. He informed the Board that mailings were sent to tree trimming and logging businesses. He stated that Virginia and Washington are the only two states with a regulation on Reverse Signal.

Mr. Withrow updated the Board on the criminal willful case involving a 14-year old who was killed in the Tidewater area while working on a wood chipper. He stated that since the last meeting (1/20/11), the company the boy was working for admitted guilt in the criminal willful conviction.

Ms. Jolly asked about the Severe Violator Enforcement Program (SVEP) for companies with multiple fatalities. She stated that SVEP should be on the Department's website and that it hasn't been publicized. She expressed concern that people don't know about SVEP. Mr. Withrow informed her where she could find information on Virginia's Regulatory Town Hall website about SVEP. He also suggested that John Crisanti or Regina Cobb could email the information to the Board members. Mr. Withrow assured Ms. Jolly that the Department would include a notice about SVEP on its website.

Items of Interest from Members from the Board

There Board members had no items of interest to share.

Adjournment

There being no further business, Chair Rodriguez requested a motion for adjournment. Mr. Stiff made the motion to adjourn the meeting. Ms. Jolly seconded the motion which was carried unanimously by voice vote. The meeting adjourned at 11:28 a.m.